

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF &  
APPENDIX**





77-2041

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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GAYLORD ANGUISH,  
Petitioner-Appellant

- v -

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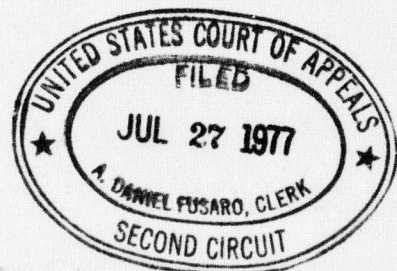
THE UNITED STATES OF AMERICA,  
Respondent-Appellee

\*\*\*\*\* X

BRIEF ON BEHALF OF APPELLANT

+  
Appendix

Gaylord Anguish  
Appellant - Pro Se  
P.O.Box 1000  
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PAGINATION AS IN ORIGINAL COPY



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PRELIMINARY STATEMENT UNDER  
SECOND CIRCUIT RULE 28

GAYLORD ANGUISH appeals from a United States Eastern District Court of New York denial of appellant's 2255 Motion (#76 C 1269) and denial of Appellant's Motion To Withdraw Guilty Plea, which was handed down in Memorandum and Order on March 9, 1977 in the United States District Court for the Eastern District of New York, by the Honorable Edwin R. Neaher, U.S.D.J..



STATEMENT OF THE ISSUES

THE issues on Appeal are denial of DUE PROCESS, which in the scope of the Amendments of the United States Constitution, present denial in magnitude of mainly the 5th and the 14th Amendments, in relationship to violations of;

1. Federal Rules Of Criminal Procedures, Rule 11
2. Federal Rules Of Criminal Procedures, Rule 32 (f)
3. Federal Rules Of Criminal Procedures, Rule 32 (a)
4. Violation of Due Process of right to be present at trial and to confrontation of witnesses.
5. Violation of Due Process, Rule 20, sub (c), use of statement given under Rule 20, and 5th and 14th Amendments violations.
6. Due process violation - use of false evidence to convict.

STATEMENT OF THE CASE

APPELLANT, on December 23, 1974, after having been informed of pending charges against him and after a number of contacts with FBI agent Joseph Chiramonte, San Jose, California, surrendered himself to said agent with a number of conditions involved in said surrender, two of them being; 1) that he be immediately released on P.R. Bond, and 2) that a Rule 20 of F.R.C.P. be allowed so that he be able to face the charges in California where appellant lives, and not have to go to New York. Part of the Rule 20 condition was that he would give a full statement and plead guilty. Appellant gave a full statement (see attached exhibit "F" and "G"), but eleven days later on January 3, 1975 after appellant was released on P.R. Bond (see attached exhibits "H" and "I"), the Rule 20 conditions were not met by the U.S. Attorney Katzberg in New York, which meant appellant would go to New York to face the charges.

On January 31, 1975 in the Eastern District Court of New York, appellant plead guilty to the Bank Robbery count of No. 75 CR 50. Prior to sentencing on that plea the court received psychiatric reports which raised questions as to the appellant's mental condition at the time of the plea and also with respect to appellant's mental condition at the time of the offense. During March and April of 1975 three private psychiatrists; Dr. Bloom, Dr. Kohl and Dr. Berg, and two federal psychiatrists; Dr. Goldstein and Dr. Caffery, all of whom had interviewed the appellant, formed opinions which collectively told the court that the appellant's mental condition was in such a state that he needed psychiatric



help, as much and as soon as possible and that if appellant did not receive the help, he may fall further into mental illness. Intensive psychiatric help was prescribed outside of a prison setting (see psychiatric reports in court files)

During a May, 1975 court hearing the court questioned the appellant's mental state for the time of the crime and in June, 1975 the appellant was sent to Springfield Medical Center for more evaluation, but the staff there was unable to evaluate the appellant's mental state during the time of the crime (July, 1974) and they stated that;

"doctors who saw the defendant closer to the time of the offense would be in a better position to determine" (see Springfield report, Dr. Fain, July, 1975)

As was later pointed out by testimony of psychiatrists during the January 12, 1975 hearing and at the trial in April, 1976, on Oct. 6, 1975 after ten months of incarceration and numerous psychiatric evaluations formed and because of failure on the part of the U. S. Attorney General and the court to order the prescribed psychotherapy, the appellant became amnesic, loosing his memory for the previous seven (7) years, including the time period for the crime. Within two weeks of the onset of the amnesia the appellant was interviewed by both the federal psychiatrist at the MCC in New York (Dr. Goldstein) and at the request of the U.S. Attorney, by Dr. Schwartz at the Kings County Hospital in Brooklyn, New York, to find out if appellant was malingering the amnesia. Both doctors seperately testified in court and in reports to the court (dated October, 1975 by Dr. Schwartz) that appellant was indeed suffering from retrograde amnesia. Both doctors testified that to force the defendant to remember by use of drugs or hypnosis could very well cause the appellant to regress into

a state of intense mental illness. In November, 1975, at the suggestion of the U. S. Attorney once again, the appellant was again sent to the Springfield Medical Center for determination. Upon arriving at the Medical Center the appellant was confronted with the use of drugs to attempt to force the memory process. With appellant knowing what affect such action could have on him, he refused the drug attempts. (see trial minutes - page 450 & 451)

Between the time of appellant's plea and trial in April, 1976 appellant was examined by 8 to 10 psychiatrists on behalf of the government and three private psychiatrists, four of whom testified at the trial. There was no disagreement among them that the appellant was competent to stand trial as far as medical determination, which consists of testing to see if he is alert to time and place and can coherently speak to his attorney and understand the charges against him. The difference in expert opinion related to his mental condition at the time of the crime in 1974 and largely concerned the genuineness of the amnesia extending back over a period of years. There were four psychiatrists who testified at trial and oddly enough the psychiatrists who had never interviewed the appellant before the onset of the amnesia (Dr. Schwartz) or was unable to determine competency at the time of the crime (Dr. Fain) were the doctors who testified that appellant was competent at the time of the crime because they could find no mental illness in the appellant other than the amnesia, which Dr. Schwartz testified to as being real and Dr. Fain testified that the amnesia was unreal because of appellant's refusal to try drugs. Out of the four psychiatrists which testified at trial, three stated that the appellant was indeed amnesic and one (Dr. Fain from Springfield)



testified that appellant didn't have amnesia because he did not allow the drugs.

The jury resolved the difference by rejecting the insanity defense largely because of the government's presentation of testimony by Special Agent Joseph Chiamonte, who testified to the appellant's admission of guilt to all five bank robberies by reading appellant's statement which was given under the promise of a Rule 20 on December 23, 1974 (see trial minutes - pages 474 thru 481)

Appellant was convicted of armed bank robbery after a jury trial in which he offered a defense of insanity in April, 1976 (No.75 CR 50). On May 6, 1976, prior to imposition of sentence, appellant was faced with four (4) separate untried indictments of Bank Robbery (75 CR 48,49,51,52), which he had pled not guilty to. On sentencing date, May 6, 1976, for No.75 CR 50, the subject of a period of probation came up but was argued against by the U. S. Attorney (see sentencing minutes, page 12) who stated that there were four outstanding indictments. With the understanding that he would be placed on probation for a period of time which would allow him to get psychiatric help in relationship to his amnesia and after the probation period he would once again come before the court for sentencing reconsideration (see sentencing minutes - page 14), and that if he plead guilty to the remaining four indictments that the court would sentence concurrent terms, appellant withdrew his prior pleas of not guilty and plead guilty to the four remaining indictments. Appellant was there upon sentenced to concurrent terms of ten years on all indictments pursuant to Title 18, U.S.C. - Section 4208 (a) (2) with credit for time served, the execution of sentence to be stayed and the appellant

placed on a period of probation (60 days) on the special condition that he will be an in-patient in the Payne-Whitney Clinic, New York, New York and that he be taken there by Marshal (see sentencing minutes - page 28) and released to the Clinic and will be obliged to surrender to the Marshal at the expiration of the sixty days probation period.

Thereafter, appellant was interviewed on May 6, 1976 by the Probation Department and the appellant was released on probation from the U. S. Marshal and entered the Payne Whitney Clinic on May 7, 1976 (see attached exhibits "A" and "B" and also see Court Order in records which ordered Marshal to release appellant to Payne Whitney, dated May 6, 1976). The following day appellant was released from the Clinic only because he was unable to pay the costs (see attached exhibit "C") and the federal government failed to assist in paying in Medicaide or through court assistance. The appellant was then admitted (see attached exhibit "D" and also see Court Order in records ordering Marshals to release appellant to hospital, dated May 7, 1976) to the Veretans Hospital, Northport, New York, by the courts permission on May 8, 1976 and stayed there for six (6) days, under the supervision of the U. S. Probation Office. On the 6th day the appellant was taken back into custody by court order. It was determined during appellant's stay at the Veterans Hospital that he was not a threat to himself or to society and thusly eligible for out-patient treatment, which was the hospitals policy (that they do not keep patients as in-patients who are not dangerous (see attached exhibit "E") The appellant was taken directly back to the MCC in New York City and in less than nine (9) hours later, he was taken directly to the USP, Lewisburg, Pa., without an appearance in court.



During sentencing, appellant was not advised of his rights to appeal nor was he in a position to think in terms of appeal, in that he had been given a probation period and any appeal matters could be decided upon at the end of the probation period when, as the court stated (see sentencing minutes, page 14), the situation could be reviewed then in the light of the treatment that he (the appellant) has received in the 60 days.

Appellant had given his lawyer, John Corbett, a list of items that should be used on appeal, but serious discussion never took place because of the circumstances. Without appellant's knowledge or consultation, appellant's lawyer did file appeal, but on only one point being inefficient counsel based on appellant's amnesia. In the appeal case NO. 75 CR 50, conviction was affirmed by the U. S. Court Of Appeals, 2nd Cir., on September 24, 1976. The appeals court having been presented with only one point on appeal by appellant's attorney, found no reason to disturb the verdict, mainly because courts thus far have dealt with amnesia on motion for continuance or on question of incompetency where a decision in favor of an amnesic defendant would effectively prevent any adjudication of the issues. Courts have been chary in reviewing such questions dealing with amnesia and have uniformly decided against the amnesic defendant.

Appellant has since filed a 2255 motion and the motion to withdraw his guilty pleas in the Eastern District Court and the court has denied the motions.

Appellant is now serving his sentence at Lewisburg Penitentiary, Lewisburg, Pa...

APPELLANT'S CASE1) NO. 75 CR 48, 49, 51, 52. MOTION TO WITHDRAW GUILTY PLEA

On July 21, 1976 appellant filed a motion to withdraw his previous guilty pleas to each of the above numbered indictments, which had been accepted on May 6, 1976 prior to sentencing on the same day along with NO. 75 CR 50 for which appellant had been tried and found guilty by a jury.

Appellant presented as grounds for taking back the pleas, that he was under the mental disability of Amnesia at the time he offered the plea; that he could only answer to the Rule 11 questions of the court as to if the appellant did commit the crimes, by stating;

"I'm convinced I did that"

This was done without any knowledge of the crimes in that appellant had no memory of the crimes.

Appellant also contends that a promise by the court to place him on probation so he could receive psychiatric treatment, was what lead the appellant, with the court's understanding of this fact, to plead guilty. The promise by the court was not kept in that appellant was reincarcerated and sent to prison.

2) NO 76 C 1269 RULE 32 (f) VIOLATION F.R.C.P.

Appellant contends that he was placed on probation on May 6, 1976, that he was removed from said probation without due process, and that he has never been legally removed and is still on probation while being incarcerated, that there was no revocation hearing nor was appellant brought back before the court as per F.R.C.P. 32 (f) dictates.



3) NO. 76 C 1269 RULE 32 (a) VIOLATION F.R.C.P.

Appellant contends that the court failed to comply with Rule 32 (a) F.R.C.P. on notification to right to appeal.

4) NO. 76 C 1269 RIGHT TO BE PRESENT AT TRIAL AND TO CONFRONT WITNESSES

Appellant contends that he was denied these rights because of his amnesic condition and that being present at trial extends to being present physically as well as mentally.

5) NO. 76 C 1269 USE OF STATEMENT OF APPELLANT

Appellant contends that oral statement given to FBI agent on arrest was given with promise of Rule 20, that appellant could stay in California to face charges. Rule 20 was later denied by U.S. Attorney in New York and appellant went to New York for trial and that the statement given should not have been used against him at trial in that it was made in Rule 20 situation and due process dictates that statements made thusly cannot be used against appellant upon denial of Rule 20

Appellant also contends that use of statement of guilt of other crimes made by appellant, was used by the government to convict with the purpose of showing criminal disposition of appellant to jury.

6) NO. 76 C 1269 USE OF FALSE EVIDENCE TO CONVICT

Appellant contends that prosecution introduced testimony of appellant having been convicted of previous crime in order to impeach defense testimony of psychiatrist, which said testimony was based on appellant's sudden change to crime as to show mental illness in appellant.

Appellant contends that prosecution testimony was false in that there was no conviction and that the testimony was harmful to defense

GOVERNMENT'S REBUTTAL1) NO. 75 CR 48,49,51,52 MOTION TO WITHDRAW GUILTY PLEA

Government denied motion by stating there was no reason to entertain application because there was trial testimony of witnesses who positively identified defendant as the perpetrator in each case. Government also states that defendant was unable to comply with the conditions of probation in that Payne Whitney Hospital and the Veterans Hospital refused to take him as an in-patient.

2) NO. 76 C 1269 RULE 32 (f) VIOLATION

Government denied this point by stating that appellant was not placed on probation and that if he had succeeded in being admitted as an inpatient at either hospital he would have been under probation supervision. Government states this did not happen and that appellant remained in custody of the U. S. Marshal.

3) NO. 76 C 1269 RULE 32 (a) VIOLATION

Government plainly states appellant was not afforded right of allocution and that sentencing minutes do not reflect the prescribed advice to right of appeal. Government states appellant deliberately by-passed these points on direct appeal or that error was harmless since appeal was in fact taken.

4) NO 76 C 1269 RIGHT TO BE PRESENT AT TRIAL AND TO CONFRONT WITNESSES

Government contends that these points formed part of question of appellants competency to stand trial because of his amnesia and decided against appellant.



5) NO. 65 C 1269 USE OF STATEMENT OF DEFENDANT TO CONVICT

Government states that admitting testimony of other untried charges in the governments case against the appellant was with the limited purpose of showing the jury appellants state of mind, which he had placed in issue.

6) NO. 76 C 1269 USE OF FALSE EVIDENCE TO CONVICT

Government contends that the admission into evidence of a 1963 burglary conviction to impeach the testimony of psychiatrist called as a defense witnesses even if in error because the burglary conviction was set aside, does not rise to Constitutional dimension, in light of the psychiatrists testimony that he was aware of the earlier conviction and that it did not alter his opinion.

ARGUMENT1) NO. 75 CR 48, 49, 51, 52. MOTION TO WITHDRAW GUILTY PLEA

Contrary to the government's statement that there was testimony brought into the trial, of witnesses who I.D. the appellant, there was no testimony or witnesses brought forth during trial or at any other time except the witnesses involved in No. 75 CR 50 for which appellant was being tried. In addition, the only entrance into the trial about the above named cases was when Special Agent Chiaramonte testified as to appellant's statement upon arrest on December 23, 1974 in San Jose, California, for which more argument dealing with said statement can be found herein under Rule 20 F.R.C.P. violation. Government's statement holds no merit on this point, in fact, the court having knowledge as to how and why appellant could only say "I'm convinced I did that" to the courts Rule 11 questions surely amounts to violation of due process involving Rule 11. Nowhere in governments rebuttal do they deny this violation. As found in U. S. v Cody C.A. Mo. 1971, 438, F2d 287, guilty pleas entered on unkept promises or otherwise entered involuntarily constitute the manifest injustice set forth in rules relating to withdrawal of guilty plea. Where the rule relating to acceptance of guilty plea by judge was not complied with, defendant is entitled to plead anew without showing manifest injustice.

The government is also much misinformed as to the in-patient status and probation issue. As Exhibits "B" and "C" clearly show, appellant was indeed taken as in-patient at both hospitals. Reasons for leaving were not because appellant did not need the treatment, but because of financial inability and government policy. Appellant in no way failed



to comply with condition and indeed it was within the power of the court to order payment for appellants stay at Payne Whitney or order in-patient status at the Veterans Hospital. The government was much misinformed as to the situation and not enough interest was put forth to consider other alternatives than prison incarceration. Indeed, one other alternative was open to the appellant, that he could go to the New York City Veterans Hospital, but before it could be presented to the court, appellant was (within 8 hours of reincarceration) removed to the Lewisburg Federal Prison, where he is now. Perhaps this problem would have been solved if the court had followed the F.R.C.P. and brought appellant back into court as the rules direct.

Appellant contends that the governments argument holds no merit, that the court was very much uninformed about in-patient status of appellant, that there was no evidence or testimony of witnesses presented at trial to show that appellant did do the other crimes for which he had entered a guilty plea for under certain promises and that the points herein represent violations of due process and to appellants rights under the 5th and 14th Amendments of The Constitution of the United States.

2) No. 76 C 1269 RULE 32 (f) VIOLATION

Again, the government is much misinformed. As Exhibits "A", "B", "C", and "D" show, appellant was indeed admitted to both hospitals as an in-patient. Upon being admitted he was no longer under the custody of the U. S. Marshal (also see court orders in case file dated May 6 and 7, 1976 in which the Marshal turned the appellant over to each hospital). Furthermore, Exhibit "A" is clear in its wording that appellant was placed on probation. The sentencing minutes clearly show that appellant was placed on probation. If the court had decided to change such a sentence

or take appellant off of probation, then ~~the~~ proper method to follow are written out in the Federal Rules Of Criminal Procedure Rule 32 (f)

"the court shall not revoke probation except after a hearing at which the defendant shall be present"

and that appellant should have been brought back to court for a hearing, which he was not. Crowe V U.S. C.A. 6, 200 F2d 526: "Order modifying or amending order of probation while prisoner was not present, order was invalid". In this light, the governments statements are clearly erroneous and in fact, appellant has never been legally taken off probation and has been incarcerated in USP Lewisburg since May, 1976 while still on probation, never having been submitted to a revocation hearing as per due process clearly directs in Rule 32 (f) F.R.C.P..

3) No. 76 C 1269 RULE 32 (a) VIOLATION

Here, government admits violation of appellants rights and due process. In governments stating that appellant did take appeal through his appointed lawyer, combined with the fact that this violation, among the others, failed to appear in said appeal, shows fault on the part of appellants attorney and not fault or delibertness on the part of appellant, in that appellant was unaware of the filing of said appeal, nor did he know the contents of said appeal. As pointed out in Calland v U.S. C.A. Ind 1963, 323 F2d 405;

"defendant who justifiably believes that he is represented by counsel, and who instructs counsel to appeal, and who is assured by counsel that appeal will be filed, should not suffer loss in rights if counsel proves faithless."

In this, combined with the number of items in the 2255 motion that



the government states should have been on direct appeal, leads to the belief that appellants attorney lacked the interest to properly appeal the case in this circumstance, and appellant should not suffer the loss of his rights to appeal. In the courts denial of this point, the court suggests law that states appellant can not, after deliberately bypassing point on direct appeal, bring up those points on a 2255 Motion, less the error was fundamental defect which inherently resulted in a complete miscarriage of justice. The court then by passes and leaves this question unanswered. As in Fay V Noia, 372 U.S. 391, 438 - 439 (1963; Moffett V Wainwright, 512 F2d 496, 500-501 (5th Cir. 1975), in order for the court to dismiss points on petition because the court contends appellant deliberately by-passed the issues on direct appeal, it must be shown that appellant consciously, knowingly and deliberately by-passed the issues.

As the government admits to lack of due process, appellant argues that this is a due process violation of Constitutional magnitude.

4) No. 76 C 1269 RIGHT TO BE PRESENT AT TRIAL AND TO CONFRONT WITNESSES

There never was a question raised before or during trial, except by the appellant in a typed letter to the court in March, 1976 which was not answered by the court, about whether appellant was competent to relate facts to his lawyer about the crime, or confront witnesses against him, or to determine if appellant was able or unable to call witnesses in his own behalf, including psychiatrists. Appellants attorney attempted to gain psychiatric testimony by having other psychiatrists interview appellant but was unsuccessful because doctors stated that because of appellants amnesia that they would truly not be able to determine and testify as to appellants mental state as to the time period of the crime.

The only question raised in pertrial deliberations about competency was related to appellants ability to confer with his attorney and understand the proceedings against him, not to find out if appellant could relate facts as a defendant with memory of the crime could do. Appellants attorney had his hands tied in this realism, as so stated on direct appeal.

Appell it, having gone through his trial, post trial and pre-trial procedures contends that without doubt he was left from testifying in his own behalf and that he, after hearing the case against him, was denied the right to properly answer charges because of his lack or presence of mind in attendance as to the actual act due to amnesia. Due process dictates that defendant be present at trial physically as well as mentally U.S. v Miller 131 F. Supp. 88 (D. Vt. 1955). Furthermore, it is totally relevent to this fact that a denial of the right to be present mentally should destroy the jurisdiction of the court and thus to violate its judgement. People V Rogers 150 Cal. App. 2nd 403, 309 P.2d 949 (1957).

Furthermore, there was no decision by the trial court after trial as to how the appellants amnesia did or did not affect his ability to defend himself. In a case such as this when the main items used by the prosecution to convict are not material items, but rather expert witnesses and lay witnesses, there should be a clear determination.

5) No. 76 C 1269 USE OF STATEMENT OF DEFENDANT

The appellant having not been advised of his rights to appeal, and at sentencing the court stated that appellant would come before the court again after the probation period, appellant was with the lack of thought of appeal in that he had gotten probation, which was promised. Appellant



was not brought before the court again for a chance to be given notice to right to appeal or to file appeal. Appellant did not take appeal. Appellant's attorney did so, without appellants knowledge or approval and did so in a manner as to show little interest in appellants welfare. This was pointed out by the courts own statement that certain points on appellants 2255 Motion should have been on direct appeal, which shows the lack of interest by the appellants attorney, not the intention of the appellant, and as in Kaufman V U.S., 394 217, 230 - 231 (1967); U.S. V Coke, 404 F2d 836 (2nd Cir 1968), it is determined that where the issues in petition would amount to denial of a fair trial, but could not have been raised on appeal, they can generally be raised in a collateral challenge to the sentence.

In the light of the aforementioned, the subject of appellants statement of guilt is most **important**. The statement made by the appellant on December 23, 1974 in which he gave full details of the crimes, this statement was made with a promise of a Rule 20 F.R.C.P. in which appellant would be able to try in California where he lived to face the charges. As pointed out in Exhibits "F", "G", "H", and "I", the Rule 20 was later denied on January 3, 1975 by the U. S. Attorney in New York and appellant had to face the charges in New York. As Rule 20, sub (c) points out, the statement of guilt should not have been used against him to convict. During trial, FBI agent took the stand and did in fact testify as to appellants statement of guilt made under promise of Rule 20 (see trial minutes pages 474 - 481) This was one of the major factors leading to appellants conviction by the jury. Appellant contends that if prosecution wanted to bring in all charges to bolster the governments case, it should have tried the case for all the crimes in court so that the defense could have been able to bring in

testimony therein, and that by allowing the statement by the FBI agent, there was surely a due process violation of Constitutional magnitude.

The government attempts to suggest that the statement of the appellant which FBI agent testified to, in which prior and subsequent acts were given to the jury, was admitted to show defendants state of mind, which he had placed in issue. Appellant contends that no evidence of state of mind existed in the FBI agent's testimony other than to prove a criminal disposition or to show that appellant would commit the crime which he was charged. As in Lane V. Warden, Md. Pen., C.A. Md 1963, 330 F2d 179

"such evidence is inadmissible either to establish guilt or to show that defendant would be likely to commit the crime with which he is charged."

and as stated in Harper V U.S., 1956, 239 F2d 945, 99 U.S. App D.C. 324

"evidence tending to prove merely criminal disposition is inadmissible because of the likelihood that it will weigh heavily with the jury."

Furthermore, both Dr. Berg and Dr. Golstein are on the record stating that appellant was in a frenzied state at the time the statement of guilt was made in December, 1974 and this point has been continuously avoided by the court with almost as much interest and intent and purpose as has the court avoided the subject of the appellant's amnesia state at trial.

6) No. 76 C 1269 USE OF FALSE EVIDENCE TO CONVICT

The government states that Dr. Bloom, defense psychiatrist testimony would not have been affected as to his decision about his evaluation of the appellant by statement:



"he (Dr. Bloom) was aware of the earlier conviction and that it did not alter his opinion."

The testimony of the earlier conviction was brought into trial before the jury in cross of Dr. Bloom to purposely impeach the doctors testimony before the jury, for which the doctor had testified that appellant was not responsible for his actions during the crime (as outlined in Freeman case). However, as noted there was no conviction and should not have been used by the prosecution. It was used and in this, the government is wrong in its stating it would not affect the the witnesses testimony. In fact it did and the jury received the testimony as though it would tend to impeach all that Dr. Bloom had testified to. (see trial minutes - pages 265,266)

Question. Did you take into account the conviction when you made that statement?

Answer. I wasn't thinking about that, no.

Question. Would it have been important to have considered it?

Answer. Yes, it would have been.

This clearly shows that the use of the false testimony of a previous conviction surely placed shadows on the defense psychiatrists testimony, and the said testimony was nearly half the defense case.

On the same side of the coin, what affect would it have on the psychiatrists testimony who testified for the prosecution if they had known that the appellant had never before been convicted of a crime and thusly not had a criminal disposition before the act he was being tried for? This question could only be answered if reevaluation was to take place and the testimony given at trial again with fact as background and not fiction such as the prosecution lead the jury to believe.

UNITED STATES DISTRICT COURT  
FOR THE  
EASTERN DISTRICT OF NEW YORK

EXHIBIT "A"

PAGE 21-a

To GAYLORD ANGUISH  
23575 Skyview Terrace  
Address Los Gatos, California

Docket No. 75-CR-50

In accordance with authority conferred by the United States Probation Law, you have been placed on probation this date, May 6, 1976, for a period of 60 days by the Hon. EDWARD R. NEAHER United States District Judge, sitting in and for this District Court at Brooklyn, N.Y.

CONDITIONS OF PROBATION

It is the order of the Court that you shall comply with the following conditions of probation:

- (1) You shall refrain from violation of any law (federal, state, and local). You shall get in touch immediately with your probation officer if arrested or questioned by a law-enforcement officer.
- (2) You shall associate only with law-abiding persons and maintain reasonable hours.
- (3) You shall work regularly at a lawful occupation and support your legal dependents, if any, to the best of your ability. When out of work you shall notify your probation officer at once. You shall consult him prior to job changes.
- (4) You shall not leave the judicial district without permission of the probation officer.
- (5) You shall notify your probation officer immediately of any change in your place of residence.
- (6) You shall follow the probation officer's instructions.
- (7) You shall report to the probation officer as directed.

The special conditions ordered by the Court are as follows:

Ten years, execution of sentence suspended, 60 days probation with special condition that he undergo treatment for 60 days at Payne Whitney Institute and then surrender to US Marshal. Subject to be taken to Payne Whitney Institute by US Marshal for psychiatric treatment.

I understand that the Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within the maximum probation period of 5 years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

I have read or had read to me the above conditions of probation. I fully understand them and I will abide by them.

AS DIRECTED BY U.S.  
PROBATION OFFICER.

(Signed)

Probationer

Date

You will report as follows:

75-5044  
MR. JAMES F. HARAN  
CHIEF U. S. PROBATION OFFICER  
ROOM 304 - U. S. COURT HOUSE  
225 CADMAN PLAZA EAST  
BROOKLYN, N. Y.

U. S. Probation Officer

Date



## THE NEW YORK HOSPITAL

Chartered 1771

525 EAST SIXTY-EIGHTH STREET

NEW YORK, N.Y., 10021



PAYNE WHITNEY PSYCHIATRIC CLINIC

April 12, 1977

Mr. Gaylord W. Anguish  
P.O. Box 1000  
Lewisburg, Pennsylvania 17837

Dear Mr. Anguish:

Our records indicate that you were a patient at Payne Whitney Psychiatric Clinic from May 7, 1976 until May 8, 1976. Dr. Richard Kohl states that Payne Whitney Clinic is not in possession of any court order and therefore suggests that you write or contact your lawyer.

You may contact Medicaid by calling the applications division, area code 212, 790-3151.

Sincerely yours,

Mervyn M. Peskin, M.D.  
The Psychiatrist

MMP:vt

cc: Mrs. Jane Lugo

## THE NEW YORK HOSPITAL-CORNELL MEDICAL CENTER

EXHIBIT "C"

PAGE 21-c

MEDICAL DIRECTOR  
PAYNE WHITNEY PSYCHIATRIC CLINIC  
DEPARTMENT OF PSYCHIATRY

August 10, 1976

Gaylord W. Anguish  
P.O. Box 1000  
Lewisburg, Pennsylvania 17837

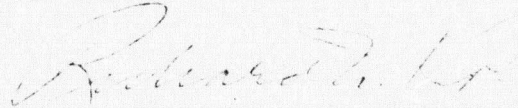
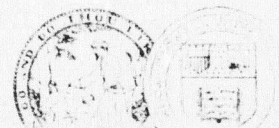
Dear Mr. Anguish:

I too regret that you were unable to stay here at the Payne Whitney Clinic, particularly when I thought I had established your eligibility for Medicaid. You were admitted to the Payne Whitney Clinic on May 8th and discharged on May 9th, 1976.

In the past you saw Dr. John W. Berg, 1149 Chestnut Street, Menlo Park, California and Dr. Arthur M. Bodin (a psychologist), 555 Middlefield Road, Palo Alto, California 94301.

Am happy to hear that you can still look ahead with "hope", knowing full well how difficult it must be for you. At least time passes quickly and the day will come when you will be free again.

Sincerely,

  
Richard N. Kohl, M.D.





VETERANS ADMINISTRATION  
HOSPITAL  
NORTHPORT, NEW YORK 11768

April 14, 1977

IN REPLY 632-136D  
REFER TO:  
ANGUSH, Gaylord W.  
SS 130 32 6284

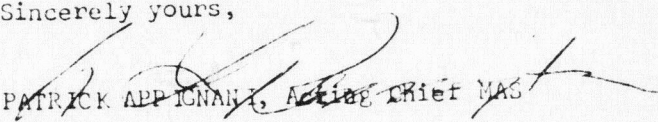
Mr. Gaylord Anguish  
P. O. Box 1000  
Lewisburg, PA 17837

Dear Mr. Anguish:

This is to certify that you were hospitalized at this facility on  
5-18-76 to 5-12-76.

We hope we have been of assistance to you.

Sincerely yours,

  
PATRICK APPIGNANI, Acting Chief MAS

DOCTOR'S PROGRESS NOTES

(Sign all notes)

DATE

attitude - He denies drug abuse,  
alcohol abuse, head injury,  
seizures, unconsciousness, delusions  
& hallucinations -

He is fully oriented to time  
& place - He remembers the  
presidents from Ford to Truman  
but is unable to recall any  
name from one moment to the  
next. - He denies any of severe de-  
pression & apathetic behavior

Imp: - MYSTICAL AMNESIA

Suggest: - There appears to be  
no need at present for in-  
patient psychiatric treatment -

T. Troiano, MD



## CLINICAL RECORD

## DOCTOR'S PROGRESS NOTES

(Sign all notes)

DATE

cont.

- He has no recollection of him. He further states his wife died of leukemia & he has no recollection of her illness.

## Mental State:

- This is a W.D., W.K., W.D.<sup>7</sup> appearing around his stated age. There are no abnormalities of motor behavior. There are no outward manifestations of anxiety except for sweating palms which belie his calm, self-possessed attitude. His speech is relevant & coherent, with no signs of thought disorder. His affect is appropriate but restricted & he relates the story of his wife's death, his father's suicide & brother's death in a car crash with no emotional display in a rather ~~dispassionate~~ <sup>dispassionate</sup> fact.

PATIENT'S IDENTIFICATION (For typed or written entries give: Name, last, first, middle, grade, date, hospital or medical facility)

Anguish

REGISTER NO.

WARD NO.

51076

## DOCTOR'S PROGRESS NOTES

Standard Form 509

May 1969 (Rev.)

General Services Admin. &amp;

Int. Agency Comm. on Med. Records

509-108

ANGUSH GAYLORD  
23575 SKYVIEW TERR  
LOS GATOS CAL

05

6284

1E032 284

## FEDERAL BUREAU OF INVESTIGATION

Date of transcription 12/26/74

At approximately 5:00 PM, GAYLORD WILLIAM ANGUISH telephonically contacted the San Jose Resident Agency and spoke with SA JOSEPH CHIARAMONTE, FBI, San Jose. ANGUISH during this conversation, desired to surrender himself to the FBI, but expressed a deep desire to remain free until after January 1, 1975. ANGUISH was advised this was impossible without his surrender.

At approximately 5:30 PM, ANGUISH telephonically contacted the San Jose Resident Agency and spoke with SA CHIARAMONTE requesting that he would definitely surrender if arrangements were made to give him more time to straighten out personal affairs of his girl friend, SANDRA HOBBS MILLER. He was advised that a recommended bond of \$100,000 was made by authorities in New York and removal of such would be impossible. Arrangements were made that ANGUISH would telephonically contact SA CHIARAMONTE at approximately 8:00 PM for further information.

At approximately 8:30 PM, ANGUISH telephonically contacted SA CHIARAMONTE at the San Jose Resident Agency of the FBI and he was advised that a recommendation would be made to the U.S. Magistrate that he be released on a personal recognizance bond with the below-stipulations:

1. That he surrender himself to FBI Agents.
2. That if he were released, he would surrender himself to SA JOSEPH CHIARAMONTE on January 2, 1975 at 9:00 AM.
3. That he would maintain daily contact with SA CHIARAMONTE advising of his whereabouts at all times.
- 4.. That his travel would be limited to Santa Clara and Santa Cruz Counties.
5. That he would furnish all information of robberies that he committed and those of accomplices that he had during these robberies.

Interviewed on 12/23/74 at San Jose, California File # SF 91-13771  
by SA JOSEPH CHIARAMONTE/rvs 13 Date dictated 12/24/74



FEDERAL BUREAU OF INVESTIGATION

Date of transcription \_\_\_\_\_

GAYLORD WILLIAM ANGUISH, 23575 Skyview Terrace, Los Gatos, Calif., telephone (408) 353-3279, voluntarily surrendered himself for arrest to SA JOSEPH CHIARAMONTE at the San Jose Resident Agency of the FBI. ANGUISH was advised of his rights by SA JOSEPH CHIARAMONTE. These rights were furnished to him by display of a Voluntary Appearance;-Advice of Rights form (FD-368). ANGUISH advised he understood his rights and waived such by signing the Advice of Rights form, stated he was not under the influence of drugs or alcohol. Present during the interview was SA KEITH W. THORNTON, FBI, San Jose, and SANDRA HOBBS MILLER, girl friend of GAYLORD WILLIAM ANGUISH. Upon interview, ANGUISH furnished the following information:

He robbed six banks in the Long Island and New York area. Each time he robbed a bank, he would take an airplane from California and fly to New York. Prior to his leaving California, he would telephonically contact his mother, HELEN HEBRON, 9 Eileen, Greenlawn, New York, phone (516) 368-4998, and request that she rent a car for him so that he can conduct business in New Jersey. He emphasized that his mother was unaware of his robbery activities or the purpose of his renting this vehicle.

He advised each time he robbed a bank, the same procedure was used and he would pick up the vehicle at the car rental agency by himself. He was unable to furnish the name of the car rental agency, but stated it was on Long Island and it was one of the smaller agencies, not a Hertz or Avis rental agency. His mother rented the vehicles from the same agency every time.

ANGUISH, to the best of his knowledge, furnished the below information about the bank robberies:

At approximately 10:30 AM on March 15, 1974, he entered through the back door of the National Bank of North America, Northport, New York, and approached the tellers counter stating to the teller "Give me all your money. This is a hold up". He recalls that the teller furnished him money and he placed it in a reddish manila envelope. The

Interviewed on 12/23/74 at San Jose, Calif. File # SF 91-13771  
by SAs KEITH W. THORNTON and JOSEPH CHIARAMONTE/rvs Date dictated 12/24/74  
17

## FEDERAL PUBLIC DEFENDER

NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION  
175 WEST TAYLOR STREET  
SAN JOSE, CALIFORNIA 95110

*Rec 4-27*

April 21, 1977

Mr. Gaylord W. Anguish  
No. 22517  
P.O. Box 1000  
Lewisburg, Pennsylvania 17837

Dear Mr. Anguish:

Mr. Ubhaus is no longer with our office he's in private practice at Humphreys, Berger, Pitto & Pearl, 2 North Second Street, Suite 1000, San Jose, California 95113.

I'm attaching a pertinent document from your file which is located in our office. The attached hand written page consists of notes taken by Frank Ubhaus on January 13, 1975 when he spoke with Assistant United States Attorney Katzburg in the Eastern District of New York concerning a Rule 20 disposition of your case.

Sincerely,

JAMES F. HEWITT  
Federal Public Defender

*Frank M. Mangan*  
FRANK M. MANGAN  
Assistant Federal Public Defender

FMM/njk



1/3/75

Anguish -

EXHIBIT "I"

PAGE 21 - i

Spike w/ Katzung AUSA EDNY

will not c + R 20 lps for at  
least 2 ms. -

1. - Belue's there may be more than  
just Anguish involved - (as indicated by  
FBI appt Chiswick) -

2. - Belue's there may be more back  
gabbers (as many as 10 in  
Long Island area) -

It is his opinion that they can  
better cross streets in NY w/ Anguish  
present -

Also indicated that they will not  
indict until they have dealt w/ Anguish  
in NY (some concern about having  
remind of other ppl are involved) -

therefore will go ahead with R Hq. in  
Jan 9 -

Apparently, mag in NY before  
Tuesday or there 2:00 PM -

Appear at Federal Bldg  
225 Garden Place East  
Brooklyn, NY

CONCLUSION

Appellant is being restrained of his liberty in violation of the United States Constitution. Appellant prays that this appeal be granted and an order vacating his sentence be granted.

DATE SIGNED: June 3, 1977

Respectfully submitted,

*Gaylord W. Anguish*  
Gaylord W. Anguish,  
Appellant - Pro Se

WITNESSED BY: L. R. Ruff ON June 3, 1977.

Notary Public - Authorized by  
Act of March 1, 1965, to receive  
inter county and state records

\*\*\*\*\*

Appellant has sent via U.S. Mail a true copy of this brief to the U. S. Attorney, 225 Calman Plaza East, Brooklyn, New York.

DATE SIGNED: June 3, 1977

*Gaylord W. Anguish*  
Gaylord W. Anguish  
Appellant - Pro Se

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